

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JAMAR DESHAWN CARTER,

Defendant-Appellee.

UNPUBLISHED

May 26, 2009

No. 285180

Wayne Circuit Court

LC No. 07-024885-FH

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

MEMORANDUM.

The prosecutor appeals as of right from an order, issued on the trial court's own motion, dismissing without prejudice the charges against defendant of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b. We reverse and remand for reinstatement of the charges against defendant. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case was originally set for trial on March 19, 2008, 91 days after defendant was bound over to circuit court for trial. The prosecutor was ready to proceed and had witnesses available to testify. However, the matter was adjourned to March 24, 2008, because defense counsel was ill. On March 24, 2008, the prosecutor requested an adjournment, having learned that the chemist who analyzed the marijuana would be away for the entire week. The court noted that the chemist's testimony was critical, as there was no stipulation with respect to the chain of evidence or the chemist. The trial court¹ denied an adjournment because the case was beyond the 91-day period specified in Supreme Court Administrative Order 2003-7(10), which states:

Criminal Proceedings. 90% of all felony cases should be adjudicated within 91 days from the date of entry of the order binding the defendant over to the circuit court; 98% within 154 days; and 100% within 301 days. Incarcerated persons should be afforded priority for trial.

¹ The court noted that the presiding judge had been consulted. Pursuant to Third Circuit LCR 6.100(C), the presiding judge was vested with authority to make the decision. Although not entirely clear, it appears that the presiding and trial judges' rationales were the same.

The trial court reasoned that the case could be re-filed. We review this decision for an abuse of discretion. *People v Jackson*, 467 Mich 272, 276; 650 NW2d 665 (2002).

There is no evidence of record to show how long it would have taken to reschedule the trial if an adjournment had been granted. However, the prosecutor needed an adjournment of only one week. The 154-day period set forth in AO 2003-7(10) would have expired on May 21, 2008, whereas the 301-day period would have expired on October 5, 2008. There is nothing in the record to suggest that trial could not have proceeded within the 154-day period.

While the trial court felt pressure to adjudicate cases within deadlines set by AO 2003-7(10), this order was intended to move cases along, not to create additional proceedings and a waste of resources. Given that the prosecutor timely brought the motion, that the witness's availability the previous week demonstrated diligence, and that the trial court could have adjourned and remained within the second target date of the Administrative Order, we conclude that the trial court abused its discretion in denying the motion to adjourn.

Reversed and remanded for reinstatement of the charges against defendant. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot
/s/ Douglas B. Shapiro